



California Fair Political Practices Commission

August 18, 1994

Dianna M. Higdon, City Clerk
City of Norco
P. O. Box 428
Norco, CA 91760

Re: Your Request for Advice
Our File No. I-94-189

Dear Ms. Higdon:

You have requested advice concerning the campaign disclosure provisions of the Political Reform Act (the "Act").^{1/} Since your questions are general in nature and you do not identify the councilmembers being recalled, we consider your letter to be a request for informal assistance pursuant to Regulation 18329(c)(3).^{2/} This letter will also confirm telephone assistance to your staff regarding these questions provided by Linda Moureaux and me during the month of July 1994.

QUESTIONS

1. May councilmembers under an attempted recall participate in a ballot measure committee formed to oppose the recall?
2. May councilmembers under an attempted recall make contributions from their existing council campaign committees to the committee?
3. May councilmembers make personal contributions to the ballot measure committee?
4. What are the councilmembers' campaign filing obligations?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSIONS

1. Councilmembers subject to recall may participate in the ballot measure committee formed to oppose the recall. If the councilmembers have significant influence on the actions or decisions of the committee, they are deemed to be "controlling" the committee.
2. Councilmembers may contribute campaign funds from their existing committees to the ballot measure committee.
3. Councilmembers may contribute personal funds to the ballot measure committee.
4. Each councilmember that controls the ballot measure committee must complete a Candidate Intention statement (Form 501). Each councilmember must file a Campaign Bank Account statement (Form 502) containing the required information concerning the committee's bank account. Since the committee has already filed a statement of organization (Form 410), it must be amended to indicate that it is controlled by the councilmembers. The committee must file campaign statements (Form 419) semi-annually and quarterly. Pre-election statements must be filed if a recall election is held. In addition, the councilmembers controlling the committee must file individual campaign statements (Form 490) semi-annually and they must file pre-election statements if a recall election is held.

FACTS

Four councilmembers in the city of Norco are subject to an attempted recall. Your letter states that two councilmembers have existing campaign accounts for their election to council and two councilmembers do not have existing accounts. During my telephone conversation with your staff on July 8, 1994, your staff clarified that one councilmember has a campaign committee and three councilmembers do not have existing campaign committees. A new ballot measure committee has been formed to oppose the recall. On August 10, 1994, your staff confirmed that a Form 410 indicating that the committee has not yet qualified has been filed with your office. On July 19, 1994, Linda Moureaux spoke with the treasurer of the committee who indicated that the councilmembers have been involved with the committee's activities since its inception.

ANALYSIS

The Act requires elected officeholders and candidates to file periodic campaign statements each year disclosing contributions received and expenditures made. (Section 84100 et seq.) An officeholder who is the subject of a recall is included in the definition of "candidate." (Section 82007.)

The Act provides that any person or combination of persons, including a candidate, who receives contributions totaling \$1,000 or more in a calendar year qualifies as a "committee." (Section 82013(a).) Within 10 days of qualifying as a committee, a Statement of Organization (Form 410) must be filed with the Secretary of State. (Section 84101.)

For purposes of when and where to file campaign statements, committees are divided into categories. Section 82043 classifies a recall committee as a measure committee. (Roberti Advice Letter, No. I-89-358.) Additionally, a "controlled committee" is defined in the Act as follows:

"Controlled committee" means a committee which is controlled directly or indirectly by a candidate or state measure proponent or which acts jointly with a candidate, controlled committee or state measure proponent in connection with the making of expenditures. A candidate or state measure proponent controls a committee if he, his agent or any other committee he controls has a significant influence on the actions or decisions of the committee.

(Section 82016, emphasis added.)

The Commission has interpreted the definition of "controlled committee" very broadly to include any significant participation in the actions of a committee by a candidate, his or her agent, or representatives of any other committee he or she controls. (Forcier Advice Letter, No. I-89-058.)

A committee qualified under Section 82013(a) may also be categorized as "primarily formed" to support or oppose a ballot measure (including a recall measure) or the qualification of a ballot measure. (Section 82047.5.) Certain committees, such as those formed by a candidate or officeholder to defend against a recall measure, can be both "controlled" and "primarily formed." (Roberts Advice Letter, No. I-89-570.)

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Therefore, each councilmember that controls the ballot measure committee must complete a Candidate Intention statement (Form 501). (Section 85200.) Normally, a candidate is required to complete a Form 501 prior to soliciting and/or receiving contributions. Each councilmember must also file a Campaign Bank Account statement (Form 502) containing the required information concerning the committee's bank account. (Section 85201.)

The committee must amend the statement of organization (Form 410), when it qualifies as a committee and must also indicate that the committee is a "controlled" committee. Section 84102 requires that an amendment be filed to the statement of organization whenever there is a change in any of the information contained in the statement.

The controlled ballot measure committee must file campaign statements (Form 419) semi-annually and quarterly until the semi-annual period in which the recall measure is being voted on. Semi-annual statements are due no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31. (Section 84200.) Quarterly statements are due no later than April 30 for the period ending March 30, and no later than October 31 for the period ending September 30. (Section 84202.3.) The deadlines for pre-election statements are determined by the date of the election. (Sections 84200.5, 84200.8.) Campaign statements must be filed until the committee is eligible to terminate. (Sections 82013, 84214.)

In addition, the councilmembers controlling the committee must file individual campaign statements (Form 490) semi-annually (Section 84200) and they must file pre-election statements if a recall election is held. (Sections 84200.5, 84200.8.)

With regard to officeholders who are the subject of a recall election, the Commission has advised that an officeholder may use contributions received in connection with a previous election to the office he or she holds to oppose the recall, may use contributions raised for a future election to the office held, or may establish a separate committee specifically to receive contributions in connection with the recall. (Hong Advice Letter, A-89-133.) Therefore, the councilmembers may transfer funds from an existing campaign account to the recall committee. Further, the Act does not prohibit the councilmembers from making personal contributions to the recall committee.

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If you have any questions or need further assistance, please
contact me at (916) 322-5662.

Sincerely,

A handwritten signature in cursive script that reads "Dixie Howard".

Dixie Howard
Political Reform Consultant
Technical Assistance Division

Enclosure